3. Same—Actions—Declaration—Evidence.—Where the declaration in an action on a note alleged that a specified sum was due thereon, together with interest, a note with a blank for the amount due thereon was inadmissible.

4. Same—Denial of Execution—Affidavit—Necessity.—A defendant in an action on a note cannot prove that he did not execute the note, unless he files with his pleading, as required by the express provisions of Code 1904, § 3279, an affidavit denying his signature.

[Ed. Note.—For cases in point, see vol. 7, Cent. Dig. Bills and Notes, § 1543.]

5. Same—Grounds of Defense—Sufficiency.—The statement of grounds of defense in an action on a note, that defendant did not execute the note and that she did not owe the sum claimed or any part thereof, was insufficient; for it gave plaintiff no more notice of the defense than the plea of non assumpsit.

6. Pleading—Statement of Grounds of Defense—Insufficiency—Filing Sufficient Statement.—Where a defendant's statement of his grounds of defense is insufficient, the court, on plaintiff objecting thereto, should, as authorized by Code 1904, § 3249, require the filing of a sufficient statement; and, on the failure of defendant to do so, his evidence of the matters not sufficiently described should be excluded.

NORTH BRITISH & MERCANTILE INS. Co. *v.* EDMUNDSON.

Nov. 23, 1905.

[52 S. E. 350.]

1. Insurance—Fire Policy—Proofs of Loss—Time for Furnishing.—Where a fire policy provides for furnishing of proofs of loss within 60 days, but it is not provided that there should be a forfeiture in case of failure to so furnish them, it is sufficient if they are furnished within a reasonable time.

2. Same—Instructions.—In an action on a fire policy, the evidence was conflicting as to whether insured was told by the agents of the insurer at the time the insurance was taken that an inventory exhibited by insured was sufficient, and defendant requested an instruction that if it was understood between the parties that the inventory offered was not a sufficient compliance with the provisions of the policy, and that insured promised to make a new inventory and on such understanding the policy was written, plaintiff could not recover. Held, that it was proper to modify the instruction by stating that such was the case, unless insured was told by insurer's agent at the time the insurance was taken that the inventory was sufficient.

3. Same—Iron-Safe Clause—Substantial Compliance.—A substantial compliance by an insured in a fire policy with the iron-safe clause is sufficient.

[Ed. Note.—For cases in point, see vol. 28, Cent. Dig. Insurance, § 853.]

4. Same—Proofs of Loss—Waiver—Evidence.—Where the general agent of a fire insurance company was presented with proofs of loss, and did not point out any defects in it, but indicated a purpose to contest the policy for failure to comply with the iron-safe clause, it was sufficient to warrant a finding that there was a waiver or a substantial compliance with the requirements as to proofs of loss.

5. Same—Iron-Safe Clause—Compliance with Clause—Evidence.—Insured, who was a village undertaker, presented to the insurer an inventory, which was accepted as sufficient on the writing of the policy, and thereafter in an ordinary manilla book, which contained the inventory, he entered all sales made by him and kept the same in an iron safe and produced it after the fire. He had made no purchases. He also kept a ledger, in which he made entries of certain business transactions, but which was kept in a desk and lost. It did not appear that such book contained any entry of transactions essential to an understanding of insured's business. Held, that the facts warranted a finding that there had been a substantial compliance with the iron-safe clause.

TERRY et al. *v.* McCLUNG et al.

Nov. 23, 1905.

[52 S. E. 355.]

1. Highways—Establishment—Jurisdiction—Repeal of Statute—Effect on Pending Proceedings.—Under Act Feb. 3, 1888 (Acts 1887-88, p. 68, c. 58), depriving the county court of Highland county of all jurisdiction in road cases and conferring the same on the board of supervisors, and which contains no saving clause providing for the transfer of pending cases to such board, where no final order establishing a road as applied for, and from which an appeal would lie, was made, and while the matter was in fieri and undetermined, said act was passed, the proceedings elapsed with the repeal of the statute under which they were instituted.

2. Same—What Constitutes Road—Width—Statutory Provisions.—Va. Code 1904, p. 2061, § 3878, relating to offenses concerning highways, etc., provides: "In this chapter the word 'road' shall be construed to mean any turnpike, state road, or county road." Section 944a (2), p. 440, Va. Code 1904, authorizing the board of supervisors of any county to appoint viewers to examine and report on the expediency of establishing any new road, etc., provides that every road shall be 30 feet wide and that the grade of no road hereafter located shall exceed four degrees at any one point, unless the said board order a different width or grade. Held, that the authority conferred by the latter section to order a different width in establishing new roads is for the purpose of enabling the tribunal charged with that duty to meet the exigencies of exceptional cases, and must be exercised sub-